

NEVER LIFT A FOLDING TABLE AGAIN!

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JUN 15 2011

OFFICE OF PETITIONS

USPS PRIORITY MAIL – DELIVERY CONFIRMATION #420223139405503699300129908743

June 13, 2011

Ms. Liana Walsh
Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**RE Patent #6,454,282 - Petition to Accept Unintentionally Delayed Payment of
Maintenance Fee In An Expired Patent (37 CFR 1.378(c))**

Dear Ms Walsh:

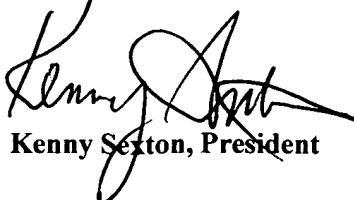
I received a letter from the patent office dated May 4, 2011 dismissing my request to have the patent reinstated due to it being "Unavoidable". A copy of that four page letter is attached.

As stated on page three of the letter, I am filing the alternate remedy, which is "Unintentional" under 37 CFR 1.378(c). I have already paid the \$1,240.00 maintenance fee and I am including a check for \$940.00 to cover the additional fee required under 37 CFR 1.378(c) as stated on page three of your letter. Also on page three of your letter, you cautioned me that any future petition must be signed by one of five parties. I am signing the petition for Table Toter, Inc., as its president. The three inventors made a complete and entire assignment to Table Toter, Inc. and that assignment is on file there at the patent office.

I respectfully ask that you reinstate patent #6,454,282 under 37 CFR 1.378(c). Thank you for your cooperation in this matter.

Sincerely,

TABLE TOTER, INC.



Kenny Sexton, President

49 Martin Street • Elkins, WV 26241-3490

Office: (888) 201-8744 • Fax: (304) 636-7798 • Website: www.tabletoter.com

Email: ksexton@tabletoter.com or bevsexton@tabletoter.com

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

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Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,454,282	2002-09-24	09/755,800	2001-01-05	JUN 15 2011 OFFICE OF PETITIONS

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity

- | | Fee | Code |
|---------------------------------|-----|--------|
| <input type="radio"/> 3 ½ year | | (1551) |
| <input type="radio"/> 7 ½ year | | (1552) |
| <input type="radio"/> 11 ½ year | | (1553) |

Small Entity

- | | Fee | Code |
|---|-----|--------|
| <input type="radio"/> 3 ½ year | | (2551) |
| <input checked="" type="radio"/> 7 ½ year | | (2552) |
| <input type="radio"/> 11 ½ year | | (2553) |

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

- ☐ An attorney or agent registered to practice before the Patent and Trademark Office
- ☐ A sole patentee
- ☐ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.
- ☐ A joint patentee; all of whom are signing this e-petition
- ☒ The assignee of record of the entire interest

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The Assignee of record of the entire interest

Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b).

Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest

Signature



Date (YYYY-MM-DD)

2011-06-13

Name

Table Toter, Inc., by Kenny Sexton, President

Enter Reel and Frame Number

Remove

Reel
Number

Frame Number

Click ADD for additional Reel Number and Frame Number

Add

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Petitions Examiner Liana Walsh at (571) 272-3206.

/dab/
David Bucci
Petitions Examiner
Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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TABLE TOTER, INC.
49 MARTIN STREET
ELKINS WV 26241-3490

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In re Patent No. 6,454,282
Issue Date: September 24, 2002
Application No. 09/755,800
Filed: January 5, 2011
Attorney Docket No. 8127-3
Patentee(s): Sexton et al.

:
:
: DECISION ON PETITION
: UNDER 37 CFR 1.378(b)
:
:

This is a decision on the petition under 37 CFR 1.378(b), filed February 3, 2011, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). **Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f).** The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued September 24, 2002. The 7.5-year maintenance fee could have been paid from September 24, 2009 through March 24, 2010, or with a surcharge during the period from March 25, 2010 through September 24, 2010. Accordingly, the patent expired at midnight September 24, 2010, for failure to timely submit the 7.5-year maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks item (1) above.

Petitioner states that the delay in payment of the 7.5-year maintenance fee was unavoidable due to the correspondence address not being timely and properly updated. On July 3, 2008, a Change of Correspondence Address was received. Although it was originally deemed unreadable and not processed, on March 9, 2011, the correspondence address was finally processed and the address was updated in the USPTO system.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

37 CFR 1.378(b)(3) states that any petition to accept delayed payment of a maintenance fee must include:

"A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly."

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd dub nom. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the maintenance fee for this patent. *Id.* As the patent holder at the time of expiration, it was incumbent on petitioner to have itself docketed this patent for payment of the maintenance fee in a reliable system as would be employed by a prudent and careful person with respect to his most important business, or to have engaged another for that purpose. See California Medical Products v. Technol Med. Prod., 921 F.Supp. 1219, 1259 (D.Del. 1995). Even where another has been relied upon to pay the maintenance fees, such asserted reliance *per se* does not provide a petitioner with a showing of unavoidable delay within the meaning of 37 CFR § 1.378(b) and 35 USC § 41(c). *Id.* Rather, such reliance merely shifts the focus of the inquiry from the petitioner to whether the obligated party acted reasonably and prudently. *Id.* Nevertheless, a petitioner is bound by any errors that may have been committed by the obligated party. *Id.*

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, *supra*. See also Final Rule entitled "Final Rules for Patent Maintenance Fees." published in Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying maintenance fee from patentee to the Office. See MPEP 2590.

However, the record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of petitioner to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement